Supreme Court, U.S.
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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1999

EX PARTE FRED MELOF, ET AL.

Petitioners,

v.

FOB JAMES, ET AL.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF OF PETITIONERS

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QUESTION PRESENTED FOR REVIEW

Does Alabama's income tax exemption scheme which taxed the retirement income of all private employees and some governmental employees, partially exempted the retirement income of other governmental employees, fully exempted the retirement income of still other governmental employees, and presently exempts pension income received by some governmental and private employees but taxes pension benefits of other governmental and private employees solely on the basis of the type of pension plan in which the employee was enrolled, violate the equal protection clause of the Fourteenth Amendment, especially in light of Amendment 25 to the Alabama Constitution which requires that the income tax be levied against public and private employees on the same basis'?

We contend it does.

Davis v. Michigan Department of Treasury, 489 U.S. 803 (1989)

Allegheny Pittsburgh Coal Co., Inc. v. County Com'n of Webster County, W. Va., 488 U.S. 336 (1989)

CERTIFICATE OF INTERESTED PERSONS

Counsel for Respondent Commissioner of Revenue	Ron Bowden Mark Griffin
Counsel for Governor of the State of Alabama	Stephen N. Dodd
Counsel for Petitioners	William J. Baxley Joel E. Dillard Charles A. Dauphin
Prior Counsel for Class Members	Jerri Lewallen James Smith Scott Vowell
Trial Judge	Hon. Eugene W. Reese Circuit Judge Montgomery County, Alabama 15th Judicial Circuit
Respondents	Fob James, as Governor of the State of Alabama in his official capacity The Commissioner of Revenue of the State of Alabama in his official capacity
Petitioners	Fred Melof E. K. Alley Marilyn Mooring and classes of similarly situated persons

Supreme Court of Alabama	Hon. Perry O. Hooper Sr. Hon. Hugh Maddox Hon. J. Gorman Houston Hon. Ralph D. Cook Hon. Harold See Hon. Champ Lyons, Jr. Hon. Jean Brown Hon. Douglas Inge Johnstone

No other persons are known to have participated directly or indirectly in the appeal of this matter.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

CERTIFICATE OF INTERESTED PERSONS ii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

STATEMENT OF THE GROUNDS OF JURISDICTION 1

STATEMENT OF THE CASE 1

ARGUMENT 10

CONCLUSION 17

APPENDIX FILED WITH PETITION ..... Separately Bound

TABLE OF AUTHORITIES

Cases: *Page*

Allegheny Pittsburgh Coal Co., Inc. v. County Com'n of Webster County, W. Va., 488 U.S. 336 (1989) ..... i, 11, 12, 13, 15

Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985) 10

Davis v. Michigan Department of Treasury, 489 U.S. 803 (1989) ..... i, 1, 5

F. S. Guano v. Virginia, 353 U.S. 412 (1920) 10

Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 10, 11

Metropolitan Life Insurance Co. v. Ward, 470 U.S. 869 (1984) 11

Nordlinger v. Hahn, 505 U.S. 1 (1992) 10

Plyler v. Doe, 457 U.S. 202 (1982) 10

Sizemore v. Rinehart, 611 So. 2d 1064 (Ala. Civ. App. 1992) *writ quashed* 611 So. 2d 1069 (Ala. 1993) 2

WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117 (1968) 11

Zobel v. Williams, 457 U.S. 62 (1982) 11

TABLE OF AUTHORITIES (continued)

Other Authorities: *Page*

U.S. Const. Amend. XIV, § 1 1

4 U.S.C. § 111 1

Ala. Const. Amend. XXV 4

Ala. Code § 40-18-19(a)(5) (1975) 5

Ala. Code §§ 16-25-3, 36-27-4, 36-21-66, 36-32-1 (1975) 6

Ala. Code § 36-21-61 through § 36-21-73 (1975) ... 6, 14

Ala. Code § 36-27-6(a) (1975) 14

Ala. Code § 40-2-22 (1975) 6

1939 Ala. Acts 419 4

1945 Ala. Acts 515 4

1959 Ala. Acts 112 4

1969 Ala. Acts 20 5

1982 Ala. Acts 82-441 5

1987 Ala. Acts 87-630 5

STATEMENT OF GROUNDS OF JURISDICTION

Jurisdiction is invoked pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 1257 because this petition is from a decision of the Supreme Court of Alabama in a civil case and the validity of state statutes are drawn into question on the grounds that they are repugnant to the Constitution of the United States.

(i) Date of the decision: May 28. 1999

(ii) No rehearing or extension of time has been sought or obtained

(iii) No cross petition has been filed

(iv) Jurisdiction is based on 28 U.S.C. § 1254 (1), 28 U.S.C. § 1257 and Rule 10(c) of the Rules of the Supreme Court.

STATEMENT OF THE CASE

(I) Nature of the Case, Course of Proceedings and Disposition

The case was originally filed, in part, as a result of the 1989 United States Supreme Court decision, *Davis v. Michigan Department of Treasury,* 489 U.S. 803 (1989), in which this Court held that the intergovernmental tax immunity doctrine and 4 U.S.C. § 111 forbade Michigan from treating federal and state retirement income differently for tax purposes. In this case, Petitioners Melof and Alley, non-military retirees, claim that Alabama's income tax scheme as applied to retirement income, violates the equal protection provisions of the Fourteenth Amendment to the United States Constitution. On December 28, 1989, the state trial court entered an order that, among other things, (1) consolidated this action with two other Montgomery County circuit court cases involving Alabama's taxation of military and federal government retirement benefits; and (2) bifurcated the claims raised

by the Petitioners from the claims of the military retirees. Judgment was entered for the federal military retirees in *Sizemore v. Rinehart*, 611 So.2d 1064 (Ala. Civ. App. 1992) *writ quashed* 611 So.2d 1069 (Ala. 1993), and tax refunds were paid to the Rinehart class.

On December 6, 1994 Petitioners Melof and Alley, along with Petitioner Morring who joined the suit, filed a restated complaint asserting, in addition to state and federal equal protection claims, that Alabama's classification of retirement benefits for income tax purposes violates the provisions of Amendment 25 to the Alabama Constitution. (R. 102-109.) After a hearing on class certification the trial court certified four classes. They are:

(1) Fred Melof; he received a pension pursuant to a "defined benefit plan" as a former employee of United States Steel Corporation. Since tax year 1991, Melof's retirement benefits have been exempt from income tax. Melof represents taxpayers who have paid state income tax on private retirement benefits for the years 1985 to 1990.

(2) E. K. Alley; a retired police officer, he received a pension and annuity from the City of Birmingham and the Alabama Peace Officers Annuity and Benefit Fund. Alley paid income tax for the years 1985 through 1990 on his retirement benefits in excess of $8,000.00 per year. Alley represents one class of eligible peace officers and firefighters who paid income tax on retirement benefits in excess of $8,000.00 per year for the years 1985 through 1990;

(3) E. K. Alley; he also represents taxpayers who have paid income tax on retirement benefits received from a municipal, county or public board which has not or had not joined the State Employees Retirement System of Alabama for the years 1985 through the present.

(4) Marilyn Morring; a retired private school teacher, she received a pension pursuant to a "defined contribution plan" offered by her former employer. Morring represents taxpayers who have paid income tax on retirement benefits received from a "defined contribution plan," or other private or public allowances, pensions or annuities for the years 1991 through the present.

(R. 421-422.)

All parties filed motions for summary judgment, (R. 143-236, 274-283), and a hearing was conducted by the court on June 4, 1996. On September 8, 1997 the circuit court handed down its order granting summary judgment in favor of the defendants. (R. 420-432.)

Petitioners subsequently filed notice of appeal to the Alabama Court of Civil Appeals on October 14, 1997. (R. 433.) The Alabama Court of Civil Appeals affirmed the trial court on May 8, 1998 by written opinion. On July 17, 1998 the Alabama Court of Civil Appeals overruled Petitioners' application for rehearing without written opinion and denied their motion for adoption of case and facts.

Petitioners next filed a Petition for Writ of Certiorari to the Alabama Supreme Court, which was subsequently granted. The Alabama Supreme Court disagreed with the Alabama Court of Civil Appeals and held that while Amendment 25 to the Constitution of Alabama has not been repealed, Petitioners have not demonstrated "beyond a reasonable doubt" that the tax exemptions at issue violated its constitutional prohibitions. The Alabama Supreme Court further reversed approximately *fifty years* of state jurisprudence, suddenly holding that the Constitution of Alabama no longer provides Alabama citizens equal protection of the law. As to the equal protection guarantees of the Federal Constitution, the Alabama

Supreme Court held that the Alabama Court of Civil Appeals had correctly applied the rational basis test and adopted that portion of the lower court's opinion. Concluding this logic is flat wrong, Petitioners now seek this Honorable Court's grant of the writ.

(II) Statement of Facts with References to Record

Alabama has exempted from its income tax pension income received from a variety of sources, largely due to the political power of these sources. Amendment 25 to the Alabama Constitution, ratified in 1933, granted the Alabama legislature power to levy a state income tax, but unlike any provision in any other state constitution, prohibited the granting of special income tax treatment, stating in pertinent part:

> . . . In the event the legislature levies an income tax, such tax must be levied upon the salaries, income, fees, or other compensation of state, county, and municipal officers and employees, on the same basis as such income taxes are levied on other persons . . .
>
> Ala. Const. Amend. XXV.

Following ratification of Amendment 25 and the passage of an act instituting the income tax, the legislature enacted a series of statutes which exempted from the state income tax retirement benefits of certain persons. In 1939 the Legislature created the Teacher's Retirement System (TRS). 1939 Ala. Acts 419, p. 559, at 573. In 1945 the Legislature created the State Employees Retirement System (SERS). 1945 Ala. Acts 515, p. 734, at 748. Both acts contained a provision exempting these retirement benefits from state and municipal taxes, including the state income tax. *Id.* at § 9.

In 1959, the legislature transferred the exemptions granted under the retirement system laws to the income tax code. 1959 Ala. Acts 112, p. 634-6. (R. 268-269.)

In 1969 the legislature exempted retirement income received as annuities under the United States retirement system and from the United States Government civil service retirement and disability fund. 1969 Ala. Acts 20, p. 44-46; (R. 270-271.)

In 1982 the legislature exempted the first $8,000.00 of any retirement or compensation, retirement allowances, pensions and annuities, or optional allowances, received by any eligible peace officer from any police retirement system established in the State of Alabama. 1982 Ala. Acts 82-441, p. 692-694; (R. 272.)

In 1987 the legislature exempted the first $8,000.00 of any retirement compensation, retirement allowances, pensions and annuities, or optional allowances received by any eligible firefighter from any firefighting agency established in the State of Alabama. 1987 Ala. Acts 87-630, p. 1130-1131; (R. 274.)

In 1990, in response to the filing of the present lawsuit and this Court's decision in *Davis v. Michigan, supra,* the Alabama legislature expanded the exemptions granted on income received as annuities under the U.S. retirement system, and from the U.S. government civil service retirement and disability fund, including income received from the Tennessee Valley Authority's pension system, income received as annuities under the U.S. Foreign Service Retirement and Disability Fund and income received from any other U.S. government retirement and disability fund. *Ala. Code* § 40-18-19(a)(5) (1975).

In the same act the legislature went further beginning January 1, 1991, and exempted all future payments made to a retiree or his designated beneficiary under a private "defined benefit plan" (as defined under § 414(j) of the Internal Revenue Code of 1986, as amended from time to time) to the extent such payment would be taxable for federal income tax purposes. *Ala. Code* § 40-18-19(a)(6) (1975). Absent these specific exclusions, the retirement

income of all other persons is taxed by the State of Alabama. Hence, this petition.

Prior to 1991, the first tax year distributions from a "defined benefit plan" were exempt, the retirement benefits of public employees who had been teachers, state employees, municipal and county employees whose employers had elected to join the State Employees Retirement System, and federal civil service workers received a full exemption from state income tax. Firefighters and peace officers enjoyed partial exemptions. *See Ala. Code* §§ 16-25-3, 36-27-4, 36-21-66, 36-32-1 (1975) respectively.

Plaintiff Alley, a retired City of Birmingham police officer, received retirement pensions or annuities from the City of Birmingham and the Alabama Peace Officers Annuity and Benefit Fund, and paid state income taxes on the portion of these funds which exceeded $8,000.00 annually for the years 1985 through 1990. (R. 96.) His partial exemption was derived from his participation in the Alabama Peace Officers Annuity and Benefit Fund, a retirement fund created by the state. *Ala. Code* § 36-21-61 through § 36-21-73 (1975). *See also Ala. Code* § 40-2-22 (1975).

As to his retirement pension from the City of Birmingham, Alley did not receive any exemption because his employer did not "opt into" the State Employees Retirement System. (See, R. 169-199 which is an Alabama League of Municipalities schedule of all cities opting into the State Retirement System, and a listing of all remaining Alabama cities.) Alabama taxed as income all retirement incomes, allowances, pension or annuities received by employees of municipalities, counties, or public boards which refused to opt into the State of Alabama Employees Retirement System. (R. 98.)

Why should the retirement income received by peace officers and firefighters from a state established pension fund be taxed any differently than the retirement

benefits received by other state and municipal employees from another state established pension fund? The Alabama Court of Civil Appeals, whose reasoning was adopted by the Alabama Supreme Court, reasoned that the state did not prevent Alley from receiving a full exemption. Rather, it was "because their employers failed to fully fund their pensions (peace officers and firefighters) . . . " (Ala. Civ. App. Opinion, p. 9) Whether Alley's employer fully funded the peace officers benefit fund is, of course, irrelevant. The state limited his exemption to $8,000.00 in benefits regardless. Additionally, the court found the state's interest in ensuring the financial stability of the SERS was a legitimate state objective which was furthered by encouraging additional enrollment. Such reasoning has no application to the peace officers benefit fund because it, also, is a state created retirement fund. How can the state have an interest in protecting one state retirement fund over another?

Similarly, why should Alley's retirement benefits — based upon his service to the City of Birmingham — be taxed any differently from the retirement benefits received by a police officer employed by the City of Montgomery, which did opt into the SERS. According to the courts below, the state did not prevent the exemptions; rather the employers, the cities, did so by electing not to join the SERS. Again, the court reasoned the state had some legitimate interest in furthering the SERS because it was an agency of the state. Of course, the courts ignored the fact that cities are essentially agencies of the state, created by the Alabama legislature and vested with only the powers granted them by the state. If full participation in the SERS is a legitimate state goal, the state could require all cities to become members. The courts' reasoning is fallacious.

Petitioner Melof received retirement benefits from United States Steel Corporation and paid state income tax on those pensions for the years 1985 through 1990 (R. 91.) Alabama taxed as income all private retirement incomes, allowances, pension or annuities for the years 1985 through 1990 (R. 93) Melof recognizes that, absent the state interest of equal taxation contained in Amendment 25, the state could impose different classifications on taxpayers provided those classifications were rationally related to a legitimate state purpose. But, Amendment 25 to the Alabama Constitution is unlike any provision in any other state constitution. It gives private employees the specific right to have their income tax levied on the same basis as that of public employees. Therefore, in Alabama, the state's interest is not advanced through irrational income tax exemptions.

In its discussion of Amendment 25, the Alabama Supreme Court noted the state's position that pensions are not compensation but are payments to former state employees. Therefore, the state contends, Amendment 25 was not violated. How, then, can the state legitimately claim that its interest in attracting qualified employees is served by exempting its employees' pension income from taxation? The exemption is either compensation or it is not.

For purposes of federal equal protection analysis, and in accordance with this Court's opinion in *Davis v. Michigan, supra,* the exemptions are compensation, and the constitutional requirement of Amendment 25 that the state income tax be levied on the same basis for public employees as private employees creates an overriding state interest. Therefore, this discrimination violates the federal equal protection rights of Melof.

Beginning in 1991, the partial exemption granted to firefighters and peace officers was expanded to a full exemption, and the full exemption was extended to private

employees who received benefits from a "defined benefit plan." Plaintiff Morring received and paid taxes on an annuity from the College Retirement Equities Fund and the Teachers Insurance and Annuity Association, private defined contribution plans available to Plaintiff Morring through the Randolph School, a private employer. (R. 94.) Alabama taxed as income, and continues to tax as income, all income, allowances, pension and annuities or distributions from "defined contribution plans." (R. 140.)

The Internal Revenue Code, as amended by the Employee Retirement Income Security Act (ERISA), Pub. L. No. 93-406, 1974, classifies qualified retirement plans as "defined benefit" or "defined contribution." This distinction between the two types of plans is that an employee's benefits under a "defined contribution plan" is the amount in an account under his name, while an employees' benefit under a "defined benefit plan" is specified by the terms of the plan, not a specific amount in the employees' account. In other words, a "defined contribution plan" specifies how much goes into the plan while a "defined benefit plan" specifies how much comes out of the plan. (R. 423, 218.) Pension benefits received from either plan are taxed the same under the federal law. (R. 219.)

There is no legitimate state purpose served by exempting from taxation a class of retirement benefits based upon the source of those benefits. Yet, the courts below held the state had a legitimate interest in the "equal treatment between state employees and those private citizens receiving comparable retirement benefits . . . " claiming that the benefits from private "defined benefit plans" were comparable to benefits received by retired state employees. The state's interest has changed one hundred eighty degrees, from attracting qualified employees to government service by enhancing their benefits over those granted private employees, to maintaining equal treatment between private and governmental

employees. Moreover, the type of retirement plan has no relationship to the benefits received from the plan. The lower court's reasoning is irrational, and only this Court's power and discretion can prevent the discrimination enforced by such rank irrationality from becoming the law of Alabama.

ARGUMENT

(I) Scope of Review

Petitioners, who are not members of a suspect or quasi-suspect class, must establish that the exemption scheme attacked here as violative of the Fourteenth Amendment fails this Honorable Court's "minimum rationality" test for tax exemptions. *Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (1985).

II. Amplification of Reason for Allowance of Writ — The Irrational Exemption Scheme in Issue Here is Unconstitutional

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall deny to any person within its jurisdiction equal protection of the laws. *Nordlinger v. Hahn,* 505 U.S. 1 (1992). And while the Equal Protection Clause does not forbid reasonable classifications, it does keep governmental decision makers from treating differently persons who are in all relevant respects alike. *F. S. Guano Co. v. Virginia,* 253 U.S. 412, 415 (1920), *Plyler v. Doe,* 457 U.S. 202 (1982). And even where — as here — persons discriminated against do not fall in a suspect or quasi-suspect classification, the Equal Protection Clause requires rational means to serve legitimate ends. *Cleburne v. Cleburne Living Centers, Inc.,* 473 U.S. 432, 442 (1985).

This Honorable Court summarized application of the Fourteenth Amendment to the case at Bar in the *F. S. Guano* case, *supra:*

> But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.
>
> 253 U.S. at 4112

This rationality test specifically applies to tax exemption schemes. *Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (1985).

By this petition, we invite this Honorable Court to reaffirm its decisions forbidding discriminations arbitrarily and irrationally imposed upon Vietnam war veterans who are newcomers to a state, rather than their more tenured brethren, *Hooper, supra,* upon recent real property purchasers rather than those who have managed to hold onto real property longer, especially in light of a state constitutional provision requiring equal taxation, *Allegeheny Pittsburgh Coal Co., Inc. v. County Com'n of Webster County, W. Va.,* 488 U.S. 336 (1989), upon disabled group home residents, rather their better advantaged neighbors, *Cleburne, supra,* upon foreign corporations rather than their domestic counterparts, *Metropolitan Life Insurance Co. v. Ward,* 470 U.S. 869 (1984), *WHYY, Inc. v. Borough of Glassboro,* 393 U.S. 117 (1968), and upon recently arriving Alaskans seeking state oil reserve dividend distributions rather than their neighbors of longstanding vintage, *Zobel v. Williams,* 457 U.S. 55 (1982), and to then decide that the constantly shifting tax exemption scheme enacted by the State of Alabama cannot stand. It is an exemption scheme which has at one time taxed the retirement income of all private employees and some governmental employees, partially

exempted the retirement income of other governmental employees, and fully exempted the retirement income of still other governmental employees. Presently, the scheme exempts pension income received by some governmental and private employees but includes as income pension benefits of other governmental and private employees — employees who do the same job but have a different type of pension plan.

In *Allegheny Pittsburgh Coal Co. v. Com'n of Webster County, W. Va.*, 488 U.S. 336 (1989), this Court addressed the issue of equality in tax treatment. There, the petitioner was a real property owner in Webster County, West Virginia who complained that the procedure used by the county tax assessor to value his property resulted in such gross disparities in assessments from that of other comparable property that petitioner's equal protection rights were violated. The Court initially noted:

> The West Virginia Constitution guarantees to its citizens that, with certain exception, "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value . . . ." Art. X. § 1.

Id. at 338.

Under the challenged law, the tax assessor assessed the value of the property at 50% of the appraised value. The appraised value, however, was fixed at the value of the declared purchase price when the property was last sold. Thus, property which was recently sold, or changed hands frequently, received a higher assessment than property which remained in the hands of one owner. This Court held there was no legitimate state interest in valuing property recently purchased significantly higher than comparable property held by an owner, especially in light of the constitutional provisions in the West Virginia Constitution.

In reaching its decision, this Court outlined the equal protection guidelines relevant to the issue of equal taxation:

> The Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class.' *Charleston Fed. Savings & Loan Assn. v. Alderson,* 324 U.S. 182, 190 (1945) (collecting classes).
>
> 488 U.S. 336 at 343.

Given the previous guidelines, this Court reaffirmed this longstanding principle:

> 'The equal protection clause ... protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class.' *Hillsborough v. Cromwell, Id.* at 346.

Allegheny Pittsburgh, 488 U.S. at 345, 346. Thus, the scheme used by the Webster County tax collector was unconstitutional.

In the present case, Petitioners are members of the same class and are similarly situated. An examination of the arbitrariness and capriciousness of the "state interests" claimed to be legitimate and the irrationality of the means which allegedly further those interests proves this.

As regards Alley and the classes of peace officers and municipal employees he represents, the Alabama Court of Appeals held that the employers of the members of these two subclasses were afforded the opportunity to join the State Employees Retirement System (SERS). Thus, according to the court, the state did not prevent Alley and the other class members from obtaining an exemption and did not deny him the equal protection of law.

Yet, the state is the real party in interest. The state created the Peace Officers Benefit Fund, mandated that

peace officers and firefighters become members of that retirement fund and prevented them from joining the SERS. *Ala. Code* § 36-21-61 through § 36-21-73 (1975). The state limited their exemption to $8,000.00 and required taxes to be paid on any pension in excess of that amount.

As regards municipal employees, their employers are cities which are instrumentalities of the state; the cities obtained the right to opt out of the SERS from the state; the cities did not receive the income tax levied on their employees' pensions, the state did. The court's holding that the state is not responsible for the discrimination is irrational, illogical, unreasonable, baseless and just plain wrong.

Having arbitrarily justified the classifications, the Alabama Court of Civil Appeals then adopted the trial court's finding that because the SERS is a public corporation and instrumentality of the state, the state had an interest in ensuring the financial stability of the SERS by increasing participation in the system. Yet, members of the peace officers fund could not join the SERS because the state barred participation by any person who was a member of any retirement, pension or benefit fund such as the Peace Officers Annuity Fund, which was partially or wholly supported by public funds. *Ala. Code* § 36-27-6(a) (1975). Inherent in the trial court's reasoning is the conclusion that the state has an interest in advancing one publicly funded pension fund over another publicly funded pension fund. Furthermore, the interest in ensuring the financial stability of the SERS through increased participation is hindered, not advanced, by giving cities and other public boards the opportunity not to join the SERS.

As regards the separate classifications of government retirement income as opposed to private retirement income (Melof), the Alabama Court of Civil Appeals

opined that the favorable tax exemptions granted governmental employees attracted qualified workers to public service and served as an inducement for them to retire in Alabama, a rational means to legitimate goals. Yet, the conflict of these goals with the paramount state interest of equal taxation established by Amendment 25 was ignored. Of course, once the Alabama Court of Civil Appeals held Amendment 25 had been repealed, any conflict between the constitutionally declared interest of equal taxation and the purported state interests of attracting qualified governmental employees and inducing them to retire in Alabama vanished. This conflict reappeared when the Supreme Court of Alabama held that the Alabama Court of Civil Appeals had erred, and that Amendment 25 was not repealed. Unfortunately, the Alabama Supreme Court gave no consideration to the impact the constitutional rights within Amendment 25 had upon an equal protection analysis. Just as the interests granted in the West Virginia Constitution were considered paramount in *Allegheny Pittsburgh, supra,* Melof's Amendment 25 right to equal income taxation should prevail over any presumed state interests recited by a court.

Interestingly, the irrationality of presuming the state had a legitimate interest in attracting qualified workers to governmental service was revealed by the Alabama Supreme Court in its discussion of Amendment 25. Its opinion notes, but does not adopt, the state's position that the tax exemption was not compensation and, thus, not prohibited by Amendment 25. If it is not compensation, it cannot be a factor in influencing persons to become governmental employees. If the exemption is used to influence persons to become governmental employees, it is compensation. And Amendment 25 demands it be taxed on the same basis as compensation to private individuals.

The other state purpose for the discrimination — to persuade governmental employees to retire in Alabama — would be better served if all persons were granted the same persuasion to retire in Alabama. The stated purpose is actually hindered, not furthered, by the tax exemption scheme.

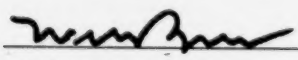
Similar illogic was used by the Alabama Court of Civil Appeals to legitimize the current discrimination between exemptions granted to persons receiving retirement income from "defined benefit plans" and withheld from persons receiving retirement income from "defined contribution plans." According to the Alabama Court of Civil Appeals, the state has an interest, not in favoring governmental employees in order to attract qualified persons to governmental service, but in maintaining equal treatment between private and governmental employees. Again, if this were the goal, the tax exemptions would have been granted to all private and governmental employees. Then there would be equal treatment and the rights granted by Amendment 25 would be obtained.

Finally, the Alabama Court of Civil Appeals claims that exempting income from all "defined benefit plans" while taxing income from all "defined contribution plans," constitutes similar treatment for "comparable benefits." Understandably, the court does not explain how benefits from "defined benefit plans" are comparable but benefits from "defined contribution plans" are not. Money is the benefit, and it is the same whether it is paid from a "defined benefit plan" or a "defined contribution plan." The same benefits are being dealt with differently and irrationally. This arbitrary practice cannot withstand federal constitutional muster.

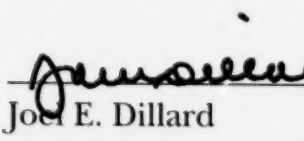
CONCLUSION

The Alabama Supreme Court danced around the connivance of the Alabama Legislature and abolished the Alabama equal protection guarantee that had been recognized for over fifty years to prevent recovery by these petitioners and the class members they represent. This Court is the last, but best, forum for recognition of their claims. It is the business of this Court to grant the writ under circumstances like these. We urge it to do so.

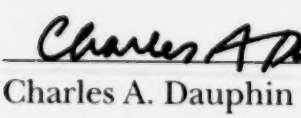
Respectfully submitted,



William J. Baxley



Joel E. Dillard



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